

Remarks

This is in response to the Office Action mailed July 8, 2003. Claims 7-9 have been added, support for the claims being found, for example, at Figures 2-4 of the present application. No new matter has been added. Reconsideration and allowance are respectfully requested.

I. Rejections Based on Heitland

In section 4 of the Office Action, claims 1-3 were rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over Heitland, U.S. Patent No. 605,713. This rejection is respectfully traversed.

As previously noted, claim 1 is directed to a fireplace and recites a shelf pivotally mounted to a front wall about a horizontal axis. One non-limiting example of such a shelf is illustrated at Figure 2 of the application (see shelf 12).

Heitland discloses a fireplace heater including a rectangular box B closed on all sides except the front and extending back to within a short distance of the back of the chimney of the fireplace. Heitland, page 1, lines 51-55 and Figures 1 and 3. The box B forms a heating-chamber heated by the combustion gases. Heitland, page 1, lines 95-97. A front of the box B is closed by a door E, having openings e to allow heated air from within the chamber of box B into the room. Heitland, page 1, lines 100-104. The openings e are closed by damper-slide e'. See Heitland, Figure 1.

Heitland fails to disclose or suggest a fireplace with a shelf pivotally mounted to a front wall about a horizontal axis, as recited by claim 1. The rejection states that it is inherent that the door E would function as a shelf when in a lower position. This assertion is respectfully traversed. For example, as shown in Figure 1 of the fireplace heater disclosed by Heitland, when the door E is in the lower position the damper slide e' used to close and open openings e of the door E is positioned on an inner surface of the door E. Therefore, in this position, the door E of Heitland would not function as a shelf since the inner surface of door is encompassed almost entirely by the damper slide e'.

The damper slide e' would likewise not constitute a shelf because the damper slide e' is configured to slide to open and close openings e of the door E. Such a sliding motion would not be preferable for a shelf, since any objects placed on the slide e' would be displaced should the slide e' be moved to either close or open the openings e.

Therefore, Heitland fails to disclose or suggest any structure that functions as a shelf pivotally mounted to a front wall about a horizontal axis, as recited by claim 1. For at least this reason, claim 1 and claims 2 and 3 that depend therefrom are allowable. Reconsideration and allowance are respectfully requested.

II. Rejections Based on Combination of Heitland with Wilkening

In section 5 of the Office Action, claims 4-6 were rejected under section 103(a) as being unpatentable over Heitland in view of Wilkening, U.S. Patent No. 4,515,146. This rejection is respectfully traversed, and its correctness is not conceded.

However, Wilkening does not remedy the shortcomings of Heitland noted above. Claims 4-6 depend from claim 1 and as such should be allowable for at least the same reasons as those provided above with respect to claim 1. Reconsideration and allowance of claims 4-6 are respectfully requested.

III. New Claims 7-9

New claims 7-9, which all indirectly depend from claim 1, further distinguish over the cited art. For example, claim 7 depends from claim 3 and recites that when the shelf is in the closed position, a portion of the front wall extends from the horizontal axis to an outer end of the shelf, and when the shelf is in the open position, the portion of the front wall remains to enclose the combustion chamber. This is illustrated in the non-limiting embodiment shown in Figure 2 of the present application (i.e., with shelf 12 open a portion of the front wall 11 remains to enclose the combustion chamber). In contrast, when the door E in Heitland is opened access is provided to the interior of the box B and therefore there is no front wall extending from the horizontal axis to an outer end of the door to enclose the combustion chamber, as recited by claim 7.

In addition, claim 8 depends from claim 7 and recites that the combustion chamber extends between the portion of the front wall and the firebox. See, e.g., Figure 2 of the present application. In contrast, in Heitland the box B extends from a front to a short distance of the back of the chimney of the fireplace. Heitland, page 1, lines 51-55 and Figures 1 and 3. Therefore, Heitland fails to disclose or suggest the combustion chamber extending between the portion of the front wall and the firebox, as recited by claim 8.

Further, claim 9 depends from claim 2 and recites that when the shelf is in the open position a surface of the shelf extending from the horizontal axis to the outer end of the shelf is planar. As noted above, Heitland fails to suggest such a configuration because when door E is opened, the damper slide e' is provided on the inner surface of the door E. Therefore, Heitland fails to disclose a surface of a shelf extending from the horizontal axis to the outer end of the shelf that is planar, as recited by claim 9.

Consideration and allowance of claims 7-9 are respectfully requested.

VI. Conclusion

In view of the above amendments and remarks, all claims should now be in condition for allowance. Favorable reconsideration is respectfully requested. The Examiner is encouraged to contact the undersigned Attorney with any questions regarding this application.

Respectfully submitted,
MERCHANT & GOULD P.C.
P.O. Box 2903
Minneapolis, Minnesota 55402-0903
(612) 332-5300

Date: Oct 8, 2003

Robert A. Kalinsky
Robert A. Kalinsky
Reg. No. 50,471
RAK

RECEIVED
CENTRAL FAX CENTER

OCT 08 2003

OFFICIAL